

Notice of Allowability

Application No.

09/936,344

Examiner

N. Bhat

Applicant(s)

BUWALDA ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 2-23-2004 and the fax of the executed 1.132 Declaration of 3-23-2004.
2. ☒ The allowed claim(s) is/are 1, 3-5 and 7-9, 11-13, re-numbered as 1-10 respectively.
3. ☒ The drawings filed on 10 September 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.


THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


N. Bhat
Primary Examiner
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1. The examiner acknowledges receipt of the properly executed 37 C.F.R. 1.132 Affidavit on March 23, 2004, which supercedes the scanned unexecuted copy, filed March 1, 2004. The examiner will have the executed 1.132 Affidavit scanned and placed in the record.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms. Sipos on March 30, 2004.

The application has been amended as follows:

In the Claims:

Claim 1, line 3, before "cross-linked" insert --non-cereal starch--

Delete claim 2.

Claim 5, line 1, before "cross-linked" insert --non-cereal--

Delete claim 6.

Claim 12, line 1 after "foodstuff" insert --according to claim 11--

3. Examiner's Comment:

In the 37 C.F.R. 1.132 Affidavit submitted on March 23, 2004, applicant has properly compared the method and cross-linked starch as claimed in the instant invention with that of the Jeffcoat EP 0 796 868 starches. Applicant has persuasively shown that the instant non-cereal cross-linked starch and process of using the non-cereal cross-linked starch in foodstuff shown in the microscopic

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photographs of Figure 2 and Figure 4. The photomicrographs show that there is a marked difference in granule size and that the starch of the instant invention wherein the figures show discrete starch particles when the foodstuff containing the starch is subject to heat and/or shear whereas there is no showing in the Jeffcoat starch and foodstuff containing the starch does not disintegrate into discrete particles. Therefore, the product and process as claimed is new, different and unobvious over the prior art wherein the prior art fails to teach and/or suggest a process and composition comprising a cross-linked starch and foodstuff wherein the starch disintegrates into discrete starch particles when the foodstuff is subjected to conditions of heat and/or shear. The foodstuff containing the starch as claimed exhibits the properties of being short, smooth and shiny after heat and/or shear, which has not been taught either singularly or in combination by the prior art.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat
Primary Examiner
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